

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1544

Introduced by Assembly Members Cooley and Jones

July 15, 2015

An act to amend Section 82015 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1544, as amended, Cooley. Political Reform Act of 1974: behested payments.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and related matters, including campaign contributions, as defined. Under existing law, a payment made at the behest of a candidate for elective office is considered a contribution unless the payment is made for purposes unrelated to the candidate's candidacy. Under the act, a payment made by a government agency or an exempt nonprofit organization is presumed to be unrelated to a candidate's candidacy. Likewise, a payment made principally for legislative, governmental, or charitable purposes is presumed to be unrelated to a candidate's candidacy, and such payments are required to be reported by a candidate who is an elected officer if they total \$5,000 or more in the aggregate from a single source in a calendar year. For purposes of the act, an elected officer retains his or her status as a candidate for that office until the officer has terminated all of his or her committees and no longer holds the office, as specified.

This bill would provide that the provision relating to payments made by a government agency exclusively governs a payment by a governmental agency that is made principally for legislative or governmental purposes at the behest of a candidate who is an elected officer, and consequently the payment would not be subject to the reporting requirement that applies generally to payments made for legislative, governmental, or charitable purposes.

This bill would incorporate changes to Section 82015 of the Government Code proposed by both this bill and AB 10, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 82015 of the Government Code is
- 2 amended to read:
- 3 82015. (a) "Contribution" means a payment, a forgiveness of
- 4 a loan, a payment of a loan by a third party, or an enforceable
- 5 promise to make a payment except to the extent that full and
- 6 adequate consideration is received, unless it is clear from the
- 7 surrounding circumstances that it is not made for political purposes.
- 8 (b) (1) A payment made at the behest of a committee, as defined
- 9 in subdivision (a) of Section 82013, is a contribution to the
- 10 committee unless full and adequate consideration is received from
- 11 the committee for making the payment.
- 12 (2) A payment made at the behest of a candidate is a contribution
- 13 to the candidate unless the criteria in either subparagraph (A) or
- 14 (B) are satisfied:
- 15 (A) Full and adequate consideration is received from the
- 16 candidate.

1 (B) It is clear from the surrounding circumstances that the
2 payment was made for purposes unrelated to his or her candidacy
3 for elective office. The following types of payments are presumed
4 to be for purposes unrelated to a candidate's candidacy for elective
5 office:

6 (i) A payment made principally for personal purposes, in which
7 case it may be considered a gift under the provisions of Section
8 82028. Payments that are otherwise subject to the limits of Section
9 86203 are presumed to be principally for personal purposes.

10 (ii) A payment made by a state, local, or federal governmental
11 agency or by a nonprofit organization that is exempt from taxation
12 under Section 501(c)(3) of the Internal Revenue Code. A payment
13 by a state, local, or federal governmental agency that is made
14 principally for legislative or governmental purposes is governed
15 exclusively by this clause and, therefore, is not subject to the
16 reporting requirement described in clause (iii).

17 (iii) A payment not covered by clause (i), made principally for
18 legislative, governmental, or charitable purposes, in which case it
19 is neither a gift nor a contribution. However, payments of this type
20 that are made at the behest of a candidate who is an elected officer
21 shall be reported within 30 days following the date on which the
22 payment or payments equal or exceed five thousand dollars
23 (\$5,000) in the aggregate from the same source in the same
24 calendar year in which they are made. The report shall be filed by
25 the elected officer with the elected officer's agency and shall be
26 a public record subject to inspection and copying pursuant to
27 subdivision (a) of Section 81008. The report shall contain the
28 following information: name of payor, address of payor, amount
29 of the payment, date or dates the payment or payments were made,
30 the name and address of the payee, a brief description of the goods
31 or services provided or purchased, if any, and a description of the
32 specific purpose or event for which the payment or payments were
33 made. Once the five-thousand-dollar (\$5,000) aggregate threshold
34 from a single source has been reached for a calendar year, all
35 payments for the calendar year made by that source shall be
36 disclosed within 30 days after the date the threshold was reached
37 or the payment was made, whichever occurs later. Within 30 days
38 after receipt of the report, state agencies shall forward a copy of
39 these reports to the Commission, and local agencies shall forward

1 a copy of these reports to the officer with whom elected officers
2 of that agency file their campaign statements.

3 (C) For purposes of subparagraph (B), a payment is made for
4 purposes related to a candidate's candidacy for elective office if
5 all or a portion of the payment is used for election-related activities.
6 For purposes of this subparagraph, "election-related activities"
7 shall include, but are not limited to, the following:

8 (i) Communications that contain express advocacy of the
9 nomination or election of the candidate or the defeat of his or her
10 opponent.

11 (ii) Communications that contain reference to the candidate's
12 candidacy for elective office, the candidate's election campaign,
13 or the candidate's or his or her opponent's qualifications for
14 elective office.

15 (iii) Solicitation of contributions to the candidate or to third
16 persons for use in support of the candidate or in opposition to his
17 or her opponent.

18 (iv) Arranging, coordinating, developing, writing, distributing,
19 preparing, or planning of any communication or activity described
20 in clause (i), (ii), or (iii).

21 (v) Recruiting or coordinating campaign activities of campaign
22 volunteers on behalf of the candidate.

23 (vi) Preparing campaign budgets.

24 (vii) Preparing campaign finance disclosure statements.

25 (viii) Communications directed to voters or potential voters as
26 part of activities encouraging or assisting persons to vote if the
27 communication contains express advocacy of the nomination or
28 election of the candidate or the defeat of his or her opponent.

29 (D) A contribution made at the behest of a candidate for a
30 different candidate or to a committee not controlled by the
31 behesting candidate is not a contribution to the behesting candidate.

32 (3) A payment made at the behest of a member of the Public
33 Utilities Commission, made principally for legislative,
34 governmental, or charitable purposes, is not a contribution.
35 However, payments of this type shall be reported within 30 days
36 following the date on which the payment or payments equal or
37 exceed five thousand dollars (\$5,000) in the aggregate from the
38 same source in the same calendar year in which they are made.
39 The report shall be filed by the member with the Public Utilities
40 Commission and shall be a public record subject to inspection and

1 copying pursuant to subdivision (a) of Section 81008. The report
2 shall contain the following information: name of payor, address
3 of payor, amount of the payment, date or dates the payment or
4 payments were made, the name and address of the payee, a brief
5 description of the goods or services provided or purchased, if any,
6 and a description of the specific purpose or event for which the
7 payment or payments were made. Once the five-thousand-dollar
8 (\$5,000) aggregate threshold from a single source has been reached
9 for a calendar year, all payments for the calendar year made by
10 that source shall be disclosed within 30 days after the date the
11 threshold was reached or the payment was made, whichever occurs
12 later. Within 30 days after receipt of the report, the Public Utilities
13 Commission shall forward a copy of these reports to the Fair
14 Political Practices Commission.

15 (c) "Contribution" includes the purchase of tickets for events
16 such as dinners, luncheons, rallies, and similar fundraising events;
17 the candidate's own money or property used on behalf of his or
18 her candidacy, other than personal funds of the candidate used to
19 pay either a filing fee for a declaration of candidacy or a candidate
20 statement prepared pursuant to Section 13307 of the Elections
21 Code; the granting of discounts or rebates not extended to the
22 public generally or the granting of discounts or rebates by television
23 and radio stations and newspapers not extended on an equal basis
24 to all candidates for the same office; the payment of compensation
25 by any person for the personal services or expenses of any other
26 person if the services are rendered or expenses incurred on behalf
27 of a candidate or committee without payment of full and adequate
28 consideration.

29 (d) "Contribution" further includes any transfer of anything of
30 value received by a committee from another committee, unless
31 full and adequate consideration is received.

32 (e) "Contribution" does not include amounts received pursuant
33 to an enforceable promise to the extent those amounts have been
34 previously reported as a contribution. However, the fact that those
35 amounts have been received shall be indicated in the appropriate
36 campaign statement.

37 (f) (1) Except as provided in paragraph (2) or (3), "contribution"
38 does not include a payment made by an occupant of a home or
39 office for costs related to any meeting or fundraising event held

1 in the occupant's home or office if the costs for the meeting or
2 fundraising event are five hundred dollars (\$500) or less.

3 (2) "Contribution" includes a payment made by a lobbyist or a
4 cohabitant of a lobbyist for costs related to a fundraising event
5 held at the home of the lobbyist, including the value of the use of
6 the home as a fundraising event venue. A payment described in
7 this paragraph shall be attributable to the lobbyist for purposes of
8 Section 85702.

9 (3) "Contribution" includes a payment made by a lobbying firm
10 for costs related to a fundraising event held at the office of the
11 lobbying firm, including the value of the use of the office as a
12 fundraising event venue.

13 (g) Notwithstanding the foregoing definition of "contribution,"
14 the term does not include volunteer personal services or payments
15 made by any individual for his or her own travel expenses if the
16 payments are made voluntarily without any understanding or
17 agreement that they shall be, directly or indirectly, repaid to him
18 or her.

19 (h) "Contribution" further includes the payment of public
20 moneys by a state or local governmental agency for a
21 communication to the public that satisfies both of the following:

22 (1) The communication expressly advocates the election or
23 defeat of a clearly identified candidate or the qualification, passage,
24 or defeat of a clearly identified measure, or, taken as a whole and
25 in context, unambiguously urges a particular result in an election.

26 (2) The communication is made at the behest of the affected
27 candidate or committee.

28 (i) "Contribution" further includes a payment made by a person
29 to a multipurpose organization as defined and described in Section
30 84222.

31 *SEC. 1.5. Section 82015 of the Government Code is amended*
32 *to read:*

33 82015. (a) "Contribution" means a payment, a forgiveness of
34 a loan, a payment of a loan by a third party, or an enforceable
35 promise to make a payment except to the extent that full and
36 adequate consideration is received, unless it is clear from the
37 surrounding circumstances that it is not made for political purposes.

38 (b) (1) A payment made at the behest of a committee, as defined
39 in subdivision (a) of Section 82013, is a contribution to the

1 committee unless full and adequate consideration is received from
2 the committee for making the payment.

3 (2) A payment made at the behest of a candidate is a contribution
4 to the candidate unless the criteria in either subparagraph (A) or
5 (B) are satisfied:

6 (A) Full and adequate consideration is received from the
7 candidate.

8 (B) It is clear from the surrounding circumstances that the
9 payment was made for purposes unrelated to his or her candidacy
10 for elective office. The following types of payments are presumed
11 to be for purposes unrelated to a candidate's candidacy for elective
12 office:

13 (i) A payment made principally for personal purposes, in which
14 case it may be considered a gift under the provisions of Section
15 82028. Payments that are otherwise subject to the limits of Section
16 86203 are presumed to be principally for personal purposes.

17 (ii) A payment made by a state, local, or federal governmental
18 agency or by a nonprofit organization that is exempt from taxation
19 under Section 501(c)(3) of the Internal Revenue Code. *A payment*
20 *by a state, local, or federal governmental agency that is made*
21 *principally for legislative or governmental purposes is governed*
22 *exclusively by this clause and, therefore, is not subject to the*
23 *reporting requirement described in clause (iii).*

24 (iii) (I) A payment not covered by clause (i), made principally
25 for legislative, governmental, or charitable purposes, in which case
26 it is neither a gift nor a contribution. However, payments of this
27 type that are made at the behest of a candidate who is an elected
28 officer shall be reported within 30 days following the date on which
29 the payment or payments equal or exceed five thousand dollars
30 (\$5,000) in the aggregate from the same source in the same
31 calendar year in which they are made. The report shall be filed by
32 ~~the elected officer~~ with the elected officer's ~~agency and~~ *agency*.
33 *The report* shall be a public record subject to inspection and
34 copying pursuant to ~~subdivision (a) of~~ Section 81008. The report
35 shall contain the following information: name of payor, address
36 of payor, amount of the payment, date or dates the payment or
37 payments were made, the name and address of the payee, a brief
38 description of the goods or services provided or purchased, if any,
39 and a description of the specific purpose or event for which the
40 payment or payments were made. Once the five-thousand-dollar

1 (\$5,000) aggregate threshold from a single source has been reached
2 for a calendar year, all payments for the calendar year made by
3 that source shall be disclosed within 30 days after the date the
4 threshold was reached or the payment was made, whichever occurs
5 later. Within 30 days after receipt of the report, state agencies shall
6 forward a copy of these reports to the ~~Commission~~, *commission*,
7 and local agencies shall forward a copy of these reports to the
8 officer with whom elected officers of that agency file their
9 campaign statements.

10 *(II) A Member of the Legislature or a person elected to a*
11 *statewide elective office, as defined in Section 82053, shall report*
12 *behested payments of the type described in subclause (I) for one*
13 *year after he or she leaves the Legislature or the statewide elective*
14 *office. The report shall be made in accordance with the*
15 *requirements of subclause (I). A Member of the Legislature or a*
16 *person elected to a statewide elective office shall only report a*
17 *payment pursuant to this subclause if the payment would financially*
18 *benefit the former officeholder or a member of his or her immediate*
19 *family, the former officeholder's employer or the employer of a*
20 *member of his or her immediate family, or an entity with whom*
21 *the former officeholder or a member of his or her immediate family*
22 *is negotiating employment.*

23 (C) For purposes of subparagraph (B), a payment is made for
24 purposes related to a candidate's candidacy for elective office if
25 all or a portion of the payment is used for election-related activities.
26 For purposes of this subparagraph, "election-related activities"
27 shall include, but are not limited to, the following:

28 (i) Communications that contain express advocacy of the
29 nomination or election of the candidate or the defeat of his or her
30 opponent.

31 (ii) Communications that contain reference to the candidate's
32 candidacy for elective office, the candidate's election campaign,
33 or the candidate's or his or her opponent's qualifications for
34 elective office.

35 (iii) Solicitation of contributions to the candidate or to third
36 persons for use in support of the candidate or in opposition to his
37 or her opponent.

38 (iv) Arranging, coordinating, developing, writing, distributing,
39 preparing, or planning of any communication or activity described
40 in clause (i), (ii), or (iii).

1 (v) Recruiting or coordinating campaign activities of campaign
2 volunteers on behalf of the candidate.

3 (vi) Preparing campaign budgets.

4 (vii) Preparing campaign finance disclosure statements.

5 (viii) Communications directed to voters or potential voters as
6 part of activities encouraging or assisting persons to vote if the
7 communication contains express advocacy of the nomination or
8 election of the candidate or the defeat of his or her opponent.

9 (D) A contribution made at the behest of a candidate for a
10 different candidate or to a committee not controlled by the
11 behesting candidate is not a contribution to the behesting candidate.

12 (3) A payment made at the behest of a member of the Public
13 Utilities Commission, made principally for legislative,
14 governmental, or charitable purposes, is not a contribution.
15 However, payments of this type shall be reported within 30 days
16 following the date on which the payment or payments equal or
17 exceed five thousand dollars (\$5,000) in the aggregate from the
18 same source in the same calendar year in which they are made.
19 The report shall be filed by the member with the Public Utilities
20 Commission and shall be a public record subject to inspection and
21 copying pursuant to ~~subdivision (a)~~ of Section 81008. The report
22 shall contain the following information: name of payor, address
23 of payor, amount of the payment, date or dates the payment or
24 payments were made, the name and address of the payee, a brief
25 description of the goods or services provided or purchased, if any,
26 and a description of the specific purpose or event for which the
27 payment or payments were made. Once the five-thousand-dollar
28 (\$5,000) aggregate threshold from a single source has been reached
29 for a calendar year, all payments for the calendar year made by
30 that source shall be disclosed within 30 days after the date the
31 threshold was reached or the payment was made, whichever occurs
32 later. Within 30 days after receipt of the report, the Public Utilities
33 Commission shall forward a copy of these reports to the Fair
34 Political Practices Commission.

35 (c) "Contribution" includes the purchase of tickets for events
36 such as dinners, luncheons, rallies, and similar fundraising events;
37 the candidate's own money or property used on behalf of his or
38 her candidacy, other than personal funds of the candidate used to
39 pay either a filing fee for a declaration of candidacy or a candidate
40 statement prepared pursuant to Section 13307 of the Elections

1 Code; the granting of discounts or rebates not extended to the
2 public generally or the granting of discounts or rebates by television
3 and radio stations and newspapers not extended on an equal basis
4 to all candidates for the same office; the payment of compensation
5 by any person for the personal services or expenses of any other
6 person if the services are rendered or expenses incurred on behalf
7 of a candidate or committee without payment of full and adequate
8 consideration.

9 (d) "Contribution" further includes any transfer of anything of
10 value received by a committee from another committee, unless
11 full and adequate consideration is received.

12 (e) "Contribution" does not include amounts received pursuant
13 to an enforceable promise to the extent those amounts have been
14 previously reported as a contribution. However, the fact that those
15 amounts have been received shall be indicated in the appropriate
16 campaign statement.

17 (f) (1) Except as provided in paragraph (2) or (3), "contribution"
18 does not include a payment made by an occupant of a home or
19 office for costs related to any meeting or fundraising event held
20 in the occupant's home or office if the costs for the meeting or
21 fundraising event are five hundred dollars (\$500) or less.

22 (2) "Contribution" includes a payment made by a lobbyist or a
23 cohabitant of a lobbyist for costs related to a fundraising event
24 held at the home of the lobbyist, including the value of the use of
25 the home as a fundraising event venue. A payment described in
26 this paragraph shall be attributable to the lobbyist for purposes of
27 Section 85702.

28 (3) "Contribution" includes a payment made by a lobbying firm
29 for costs related to a fundraising event held at the office of the
30 lobbying firm, including the value of the use of the office as a
31 fundraising event venue.

32 (g) Notwithstanding the foregoing definition of "contribution,"
33 the term does not include volunteer personal services or payments
34 made by any individual for his or her own travel expenses if the
35 payments are made voluntarily without any understanding or
36 agreement that they shall be, directly or indirectly, repaid to him
37 or her.

38 (h) "Contribution" further includes the payment of public
39 moneys by a state or local governmental agency for a
40 communication to the public that satisfies both of the following:

1 (1) The communication expressly advocates the election or
2 defeat of a clearly identified candidate or the qualification, passage,
3 or defeat of a clearly identified measure, or, taken as a whole and
4 in context, unambiguously urges a particular result in an election.

5 (2) The communication is made at the behest of the affected
6 candidate or committee.

7 (i) “Contribution” further includes a payment made by a person
8 to a multipurpose organization as defined and described in Section
9 84222.

10 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
11 *Section 82015 of the Government Code proposed by both this bill*
12 *and Assembly Bill 10. It shall only become operative if (1) both*
13 *bills are enacted and become effective on or before January 1,*
14 *2016, but this bill becomes operative first, (2) each bill amends*
15 *Section 82015 of the Government Code, and (3) this bill is enacted*
16 *after Assembly Bill 10, in which case Section 82015 of the*
17 *Government Code, as amended by Section 1 of this bill, shall*
18 *remain operative only until the operative date of Assembly Bill*
19 *10, at which time Section 1.5 of this bill shall become operative.*

20 ~~SEC. 2.~~

21 *SEC. 3.* The Legislature finds and declares that this bill furthers
22 the purposes of the Political Reform Act of 1974 within the
23 meaning of subdivision (a) of Section 81012 of the Government
24 Code.

25 ~~SEC. 3.~~

26 *SEC. 4.* This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety within
28 the meaning of Article IV of the Constitution and shall go into
29 immediate effect. The facts constituting the necessity are:

30 It is a core principle of representative government that an elected
31 official’s duties include advocacy of government agencies in favor
32 of expenditures that benefit constituents or public purposes
33 generally. It is also well-established that a government agency
34 may not expend public funds for purposes unrelated to the business
35 of that agency. To that end, government expenditures are subject
36 to a myriad of laws designed to protect the public interest and
37 promote transparency, including laws relating to open meetings,
38 the appropriate use of public resources, conflicts of interests, and
39 disbursement practices. Therefore, it is necessary that this act take
40 effect immediately in order to provide clarity for elected officials,

1 in conformity with the Legislature's intent when it enacted Chapter
2 450 of the Statutes of 1997 that reporting requirements for behested
3 payments not apply with respect to the payments made by a
4 government agency at the behest of an elected official for a
5 legislative or governmental purpose.

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